

AMENDED IN ASSEMBLY FEBRUARY 18, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 54

Introduced by Assembly Member Olsen

(Principal coauthor: Assembly Member Gray)

(Principal coauthors: Senators Berryhill, Cannella, and Galgiani)

(Coauthors: Assembly Members *Achadjian, Travis Allen, Baker, Bigelow, Brough, Chang, Chávez, Cooper, Beth Gaines, Gallagher, Grove, Lackey, Linder, Maienschein, Mathis, Mayes, Obernolte, Patterson, Perea, and Salas*) *Salas, Waldron, and Wilk*)

(Coauthors: Senators ~~Fuller~~ *Anderson, Fuller, Gaines, Nielsen, Stone, and Vidak*)

December 1, 2014

An act to amend Section 55.56 of, and to add Section 55.565 to, the Civil Code, relating to public accommodations.

LEGISLATIVE COUNSEL'S DIGEST

AB 54, as amended, Olsen. Public accommodations: construction-related accessibility claims.

Existing law allows a plaintiff to collect statutory damages in a construction-related accessibility claim against a place of public accommodation only if the plaintiff was denied full and equal access to the place of public accommodation on a particular occasion, as specified. Existing law imposes a \$1,000 limit on statutory damages when a defendant demonstrates that the defendant has, among other things, cured the construction-related accessibility violation within 60 days of being served with a complaint. Existing law requires a demand letter alleging a construction-related accessibility claim to, among other

things, state facts sufficient to allow a reasonable person to identify the basis of the claim.

This bill would, when a plaintiff brings a claim alleging a violation of a construction-related accessibility standard within 3 years of a change in that standard, allow a plaintiff to collect statutory damages only if the plaintiff also provides the owner, agent, or other party responsible for the place in violation with a written notice or demand letter at least 60 days prior to filing any action and the violation is not cured. The bill would require the written notice or demand letter to contain specified information.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 55.56 of the Civil Code is amended to
2 read:
3 55.56. (a) Statutory damages under either subdivision (a) of
4 Section 52 or subdivision (a) of Section 54.3 may be recovered in
5 a construction-related accessibility claim against a place of public
6 accommodation only if a violation or violations of one or more
7 construction-related accessibility standards denied the plaintiff
8 full and equal access to the place of public accommodation on a
9 particular occasion, and the requirements of Section 55.565 have
10 been met, if applicable.
11 (b) A plaintiff is denied full and equal access only if the plaintiff
12 personally encountered the violation on a particular occasion, or
13 the plaintiff was deterred from accessing a place of public
14 accommodation on a particular occasion.
15 (c) A violation personally encountered by a plaintiff may be
16 sufficient to cause a denial of full and equal access if the plaintiff
17 experienced difficulty, discomfort, or embarrassment because of
18 the violation.
19 (d) A plaintiff demonstrates that he or she was deterred from
20 accessing a place of public accommodation on a particular occasion
21 only if both of the following apply:
22 (1) The plaintiff had actual knowledge of a violation or
23 violations that prevented or reasonably dissuaded the plaintiff from
24 accessing a place of public accommodation that the plaintiff
25 intended to use on a particular occasion.

1 (2) The violation or violations would have actually denied the
2 plaintiff full and equal access if the plaintiff had accessed the place
3 of public accommodation on that particular occasion.

4 (e) Statutory damages may be assessed pursuant to subdivision
5 (a) based on each particular occasion that the plaintiff was denied
6 full and equal access, and not upon the number of violations of
7 construction-related accessibility standards identified at the place
8 of public accommodation where the denial of full and equal access
9 occurred. If the place of public accommodation consists of distinct
10 facilities that offer distinct services, statutory damages may be
11 assessed based on each denial of full and equal access to the distinct
12 facility, and not upon the number of violations of
13 construction-related accessibility standards identified at the place
14 of public accommodation where the denial of full and equal access
15 occurred.

16 (f) (1) Notwithstanding any other law, a defendant's liability
17 for statutory damages in a construction-related accessibility claim
18 against a place of public accommodation is reduced to a minimum
19 of one thousand dollars (\$1,000) for each offense if the defendant
20 demonstrates that it has corrected all construction-related violations
21 that are the basis of a claim within 60 days of being served with
22 the complaint, and the defendant demonstrates any of the following:

23 (A) The structure or area of the alleged violation was determined
24 to be "CAsp-inspected" or "meets applicable standards" and, to
25 the best of the defendant's knowledge, there were no modifications
26 or alterations that impacted compliance with construction-related
27 accessibility standards with respect to the plaintiff's claim that
28 were completed or commenced between the date of that
29 determination and the particular occasion on which the plaintiff
30 was allegedly denied full and equal access.

31 (B) The structure or area of the alleged violation was the subject
32 of an inspection report indicating "CAsp determination pending"
33 or ~~"inspected"~~ *"inspected"* by a CAsp," and the defendant has either
34 implemented reasonable measures to correct the alleged violation
35 before the particular occasion on which the plaintiff was allegedly
36 denied full and equal access, or the defendant was in the process
37 of correcting the alleged violation within a reasonable time and
38 manner before the particular occasion on which the plaintiff was
39 allegedly denied full and equal access.

1 (C) For a claim alleging a construction-related accessibility
2 violation filed before January 1, 2018, the structure or area of the
3 alleged violation was a new construction or an improvement that
4 was approved by, and passed inspection by, the local building
5 department permit and inspection process on or after January 1,
6 2008, and before January 1, 2016, and, to the best of the
7 defendant's knowledge, there were no modifications or alterations
8 that impacted compliance with respect to the plaintiff's claim that
9 were completed or commenced between the completion date of
10 the new construction or improvement and the particular occasion
11 on which the plaintiff was allegedly denied full and equal access.

12 (D) The structure or area of the alleged violation was new
13 construction or an improvement that was approved by, and passed
14 inspection by, a local building department official who is a certified
15 access specialist, and, to the best of the defendant's knowledge,
16 there were no modifications or alterations that affected compliance
17 with respect to the plaintiff's claim that were completed or
18 commenced between the completion date of the new construction
19 or improvement and the particular occasion on which the plaintiff
20 was allegedly denied full and equal access.

21 (2) Notwithstanding any other law, a defendant's liability for
22 statutory damages in a construction-related accessibility claim
23 against a place of public accommodation is reduced to a minimum
24 of two thousand dollars (\$2,000) for each offense if the defendant
25 demonstrates both of the following:

26 (A) The defendant has corrected all construction-related
27 violations that are the basis of a claim within 30 days of being
28 served with the complaint.

29 (B) The defendant is a small business that has employed 25 or
30 fewer employees on average over the past three years, or for the
31 years it has been in existence if less than three years, as evidenced
32 by wage report forms filed with the Economic Development
33 Department, and has average annual gross receipts of less than
34 three million five hundred thousand dollars (\$3,500,000) over the
35 previous three years, or for the years it has been in existence if
36 less than three years, as evidenced by federal or state income tax
37 returns. The average annual gross receipts dollar amount shall be
38 adjusted biannually by the Department of General Services for
39 changes in the California Consumer Price Index for All Urban
40 Consumers, as compiled by the Department of Industrial Relations.

1 The Department of General Services shall post that adjusted
2 amount on its Internet Web site.

3 (3) This subdivision shall not be applicable to intentional
4 violations.

5 (4) Nothing in this subdivision affects the awarding of actual
6 damages, or affects the awarding of treble actual damages.

7 (5) This subdivision shall apply only to claims filed on or after
8 the effective date of Senate Bill 1186 of the 2011–12 Regular
9 Session of the Legislature. Nothing in this subdivision is intended
10 to affect a complaint filed before that date.

11 (g) This section does not alter the applicable law for the
12 awarding of injunctive or other equitable relief for a violation or
13 violations of one or more construction-related accessibility
14 standards, nor alter any legal obligation of a party to mitigate
15 damages.

16 (h) In assessing liability under subdivision (d), in an action
17 alleging multiple claims for the same construction-related
18 accessibility violation on different particular occasions, the court
19 shall consider the reasonableness of the plaintiff's conduct in light
20 of the plaintiff's obligation, if any, to mitigate damages.

21 SEC. 2. Section 55.565 is added to the Civil Code, to read:

22 55.565. (a) When a plaintiff brings a construction-related
23 accessibility claim alleging a violation of a construction-related
24 accessibility standard within three years of a change in that
25 standard, statutory damages under subdivision (a) of Section 52
26 or subdivision (a) of Section 54.3 may be recovered against a place
27 of public accommodation only if the plaintiff provides the owner,
28 agent, or other party responsible for the place of public
29 accommodation where the alleged violation occurred with
30 sufficient written notice of the allegations and alleged access
31 barriers on which the claim is based at least 60 days prior to the
32 filing of any action and the alleged access barriers are not removed.

33 (b) A written notice is sufficient for the purposes of subdivision
34 (a) if either of the following conditions is met:

35 (1) The notice states facts sufficient to allow a reasonable person
36 to identify the basis of the construction-related accessibility claim
37 under subdivision (a) of Section 55.31 and states that the recipient
38 may be civilly liable for actual and statutory damages for a
39 violation of a construction-related accessibility requirement if the

1 access barriers that constitute the basis of the construction-related
2 accessibility claim are not removed within 60 days.
3 (2) The notice is a written demand letter that offers prelitigation
4 settlement negotiations in accordance with subdivision (b) of
5 Section 55.31.
6 (c) For the purposes of this section, “construction-related
7 accessibility claim,” “construction-related accessibility standard,”
8 and “place of public accommodation” have the meanings set forth
9 in Section 55.52.

O